

§ 550.1612

5 CFR Ch. I (1–1–16 Edition)

analysis conducted for the agent's duty station as required by section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113–277);

(4) CBP determines that an agent must be assigned to a Level 1 regular tour of duty to ensure that not more than 10 percent (or higher percentage established under § 550.1614(b)) of agents stationed at a location are assigned to a Level 2 regular tour of duty or a Basic regular tour of duty, as required by 5 U.S.C. 5550(b)(1)(E) and § 550.1614; or

(5) CBP determines that assignment of a different regular tour of duty is necessary to comply with the pay assignment continuity provisions in 5 U.S.C. 5550(b)(1)(G) and § 550.1615, notwithstanding any other provision of law or this subpart (including paragraphs (f)(1) through (4) of this section).

(g) *Temporary detail.* If an agent is serving in a position under a temporary detail, that position may not be considered, for the purpose of applying paragraph (f)(3) of this section, to be the position held by the agent during the first 90 days of the detail. After completing 90 days under a temporary detail, an agent will be considered, for the purpose of applying paragraph (f)(3) of this section, to hold the position to which temporarily detailed for the remainder of the detail, notwithstanding the agent's official position of record.

§ 550.1612 Assignments made at other times.

(a) *Initial training period.* An individual who is newly hired as an agent must be assigned a Basic regular tour of duty during any period of initial training. After completing any period of initial training, an agent must be assigned a Level 1 regular tour of duty for any portion of the annual period remaining at that point, except under applicable circumstances described in paragraph (f) of § 550.1611 or paragraph (b) of this section.

(b) *Election by new agent.* An agent who would otherwise be assigned a regular tour of duty under paragraph (a) of this section may submit an election of a different regular tour of duty to be effective on a prospective basis for the remaining portion of the annual period.

CBP must provide the agent with election information no later than the date the agent begins a regular work assignment (*i.e.*, after completing any period of initial training). CBP must assign an agent the regular tour of duty elected by the agent under this section unless CBP informs the agent of an alternative assignment based on the circumstances described in paragraph (f) of § 550.1611. Such election must be submitted to CBP no later than 30 days after the agent begins a regular work assignment and, if approved by CBP, is effective on the first day of the first pay period beginning on or after the later of—

(1) The date the election was submitted; or

(2) The date the agent completed initial training.

(c) *Belated election for new agent's first annual period.* An individual who is newly hired as an agent during the period beginning on November 2 and ending on the day before the first day of the next annual period may make an election to take effect at the beginning of the next annual period notwithstanding the normally applicable December 1 election deadline, if the agent will not be in initial training status on the first day of the annual period. Such election must be submitted no later than 30 days after receiving election information, but before the first day of the annual period. Such an election is subject to the same requirements and conditions that apply to an election for an annual period under paragraphs (e) and (f) of § 550.1611. If such election is not made, CBP must assign the agent a Level 1 regular tour of duty with a 25 percent overtime supplement for the next annual period, except under applicable circumstances described in paragraph (f) of § 550.1611.

(d) *Change in tour during annual period.* CBP may change an agent's assigned regular tour of duty during an annual period based on a change in the circumstances described in § 550.1611(f) or in § 550.1622. For example, an agent's regular tour of duty may be changed one or more times during an annual period as necessary to comply with the pay assignment continuity provision described in § 550.1611(f)(5). As provided in § 550.1611(e), an annual election

Office of Personnel Management

§550.1614

under §550.1611(c) or (d) that is superseded by operation of §550.1611(f) or §550.1622 remains as the default election and becomes effective in the event that §550.1611(f) or §550.1622 ceases to be applicable. A tour change under this paragraph is effective with the change in circumstances, as determined by CBP, except as otherwise provided in paragraph (e)(2) of this section and §550.1622(c)(2).

(e) *Inability determination and effective date of tour change.* The action to assign a Basic regular tour of duty based on a determination that an agent is unable to perform overtime on a daily basis under §550.1611(f)(2) is subject to the following rules:

(1) The inability determination may be made—

(i) When an agent's law enforcement authority is revoked (e.g., in connection with an investigation, loss of security clearance, or a suspension);

(ii) When an agent is unable to perform overtime duties for an extended period due to physical or health reasons; or

(iii) For any other appropriate reason, as determined by CBP, but excluding inability based on lack of work (as opposed to inability based on the employee's availability).

(2) The change to a Basic regular tour of duty is effective on the next workday following a CBP inability determination, except that—

(i) CBP may delay the effective date to coincide with the beginning of a week or a biweekly pay period;

(ii) CBP may delay the effective date as necessary to allow an agent who is able to work during regular time to exhaust a positive balance of unused compensatory time off (by applying that balance against the newly accruing overtime hours debt resulting from work during regular time);

(iii) CBP may delay the effective date as necessary to allow an agent to use accrued paid leave or other paid time off if the agent will be performing no work during regular time for a continuous period;

(iv) CBP may delay the effective date during a continuous period of leave without pay granted under 5 U.S.C. chapter 63, subchapter V (dealing with family and medical leave); and

(v) CBP must delay the effective date during any period of paid leave, continuation of pay, or leave without pay granted in connection with application of 5 U.S.C. chapter 81 (dealing with workers' compensation due to a job-related injury).

§550.1613 Selection of agents for assignment.

If application of paragraphs (f)(3) and (4) of §550.1611 (or application of those paragraphs through §550.1612) requires CBP to select agents for assignment to a particular regular tour of duty out of a pool of agents who prefer a different assignment, CBP must make any such selection consistent with an established written plan that includes the criteria that will be considered and the priority of those criteria. Such plan must be consistent with the requirements of this subpart.

§550.1614 Limit on percentage of agents who do not have a Level 1 regular tour of duty.

(a) CBP must take such action as is necessary, including unilateral assignment of agents to a Level 1 regular tour of duty, to ensure that not more than 10 percent of agents stationed at a location are assigned to a Level 2 regular tour of duty or a Basic regular tour of duty, as required by 5 U.S.C. 5550(b)(1)(E), notwithstanding any other provision of law or this subpart, except as provided by paragraphs (b), (c), and (d) of this section. For the purpose of this paragraph, the term "location" means a Border Patrol sector, which includes all subordinate organizational structures and related geographic areas within the sector (e.g., stations).

(b) CBP may waive the 10 percent limit in paragraph (a) of this section and apply a higher percentage limit if CBP determines it is able to adequately fulfill its operational requirements under that higher limit based on a comprehensive staffing analysis conducted for the agent's duty station under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113-277).

(c) The 10 percent limit in paragraph (a) does not apply to agents working at